

UNCLASSIFIED

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EXECUTIVE SECRETARIAT

Routing Slip

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17	C/LLD/OEA		X		
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SUSPENSE		Date			

Remarks:

DOE review completed.

 Executive Secretary
 20 January 1982

Date

3437 (12-77)

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Department of Energy
Washington, D.C. 20585

*Recd
20 Jan 82*
82-0154

MEMORANDUM FOR



Central Intelligence Agency

STAT

Enclosed are copies of the recently enacted legislation which permits the Department of Energy to control the unauthorized dissemination of unclassified, yet sensitive, information. Also included are copies of the conference report and the Congressional testimony on Section 148. This material may be useful to the Central Intelligence Agency in its attempts to control the flow of sensitive information outside the agency.

We would be most willing to share with you any other background information and/or information on the strategy used in obtaining passage of Section 148. Should you need such information, please contact either Bryan Siebert (353-4227) or me (252-1870).

Trisha Dedik Chico

Trisha Dedik Chico
Office of Policy, Planning
and Coordination
Defense Programs

Enclosures

DOE review completed.

L-275

EXCERPT FROM

THE

H. R. 3413

L.W. 11/23/81

Ninety-seventh Congress of the United States of America

AT THE FIRST SESSION

Began and held at the City of Washington on Monday, the fifth day of January,
one thousand nine hundred and eighty-one

An Act

To authorize appropriations for the Department of Energy for national security programs for fiscal year 1982, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982".

TITLE I—NATIONAL SECURITY PROGRAMS

OPERATING EXPENSES

Sec. 101. Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 1982, for operating expenses incurred in carrying out national security programs (including scientific research and development in support of the armed services, strategic and critical materials necessary for the common defense, and military applications of nuclear energy and related management and support activities) as follows:

(1) For the naval reactors development program, \$279,500,000, including \$9,500,000 for program management.

(2) For weapons activities, \$2,494,600,000, to be allocated as follows:

(A) For research and development, \$732,400,000, to be allocated as follows:

(i) For the defense inertial confinement fusion program, \$142,300,000, of which—

(I) \$75,500,000 shall be used for glass laser experiments;

(II) \$40,000,000 shall be used for gas laser experiments;

(III) \$18,000,000 shall be used for pulsed power experiments;

(IV) \$7,500,000 shall be used for supporting research and experiments, except that none of such funds may be used for the research, development, or demonstration of the use of heavy ion devices as drivers for defense inertial confinement fusion experiments and defense inertial confinement fusion systems; and

(V) \$1,300,000 shall be used for inertial confinement fusion program management.

(ii) For all other research and development, \$690,100,000.

(B) For weapons testing, \$369,000,000.

(C) For production and surveillance, \$1,351,800,000.

(D) For weapons program management other than inertial confinement fusion, \$41,400,000.

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necessary, in connection with all national security programs of the Department of Energy.

ADJUSTMENTS FOR PAY INCREASES

SEC. 208. Appropriations authorized by this Act for salary, pay, retirement, or other benefits for Federal employees may be increased by such amounts as may be necessary for increases in such benefits authorized by law.

AVAILABILITY OF FUNDS

SEC. 209. When so specified in an appropriation Act, amounts appropriated for "Operating Expenses" or for "Plant and Capital Equipment" may remain available until expended.

SAFEGUARDING CERTAIN UNCLASSIFIED INFORMATION

SEC. 210. (a)(1) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by inserting after section 147 the following new section:

"SEC. 148. PROHIBITION AGAINST THE DISSEMINATION OF CERTAIN UNCLASSIFIED INFORMATION.—

"a. (1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code, the Secretary of Energy (hereinafter in this section referred to as the 'Secretary') shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

"(A) the design of production facilities or utilization facilities;

"(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

"(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142.

"(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

"(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

"(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in subsection a. (1)—

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"(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

"(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

"(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

"b. (1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

"(2) The provisions of subsections b. and c. of section 234 of this Act shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection a. of such section.

"c. For the purposes of section 223 of this Act, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act."

(2) The table of contents at the beginning of such Act is amended by inserting after the item relating to section 147 the following new item:

"Sec. 148. Prohibition Against the Disclosure of Certain Unclassified Information."

(b) Section 181 of such Act (42 U.S.C. 2231) is amended—

(1) by striking out "or" before "safeguards information protected";

(2) by inserting "or information protected from dissemination under the authority of section 148" after "section 147"; and

(3) by striking out ", defense information, or such safeguards information," each place it appears and inserting in lieu thereof ", defense information, such safeguards information, or information protected from dissemination under the authority of section 148".

**ARREST AUTHORITY FOR PERSONS AUTHORIZED TO CARRY FIREARMS
UNDER THE ATOMIC ENERGY ACT OF 1954**

SEC. 211. Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended by striking out the semicolon and inserting in lieu thereof a period and the following: "A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the

LIMITS ON CONSTRUCTION PROJECTS

The House bill and the Senate amendment (Sec. 203) contained similar provisions placing limitations on construction projects. There were minor drafting differences.

The House recedes.

AUTHORITY FOR CONSTRUCTION DESIGN

The House bill and the Senate amendment contained provisions (Section 205) placing limitations on the use of funds authorized to be appropriated for plant engineering and design. The provision in the House bill was identical to the provision requested by the administration. The Senate amendment contained more restrictive reporting requirements and required that where the total estimated cost for advance planning and construction design in connection with any construction project exceeds \$2.0 million, funds for such design must be specifically authorized by law.

The House recedes.

ADJUSTMENTS FOR PAY INCREASES

The House bill and the Senate amendment contained similar provisions concerning the authorization for federal increases in pay and benefits. There were minor drafting differences.

The Senate recedes.

SAFEGUARDING CERTAIN UNCLASSIFIED INFORMATION

The Senate amendment contained a provision (Section 210) which would amend the Atomic Energy Act of 1954 by inserting a new Section 148 and by amending Section 181 of such Act. The new Section 148 would prohibit the dissemination of certain unclassified information if such information could reasonably be expected to result in significant adverse affects on public health and safety or the common defense by increasing the likelihood of theft, diversion, or sabotage of nuclear material or Department of Energy defense facilities. The amendment to Section 181 which the Senate provision contained would conform Section 181 with the new Section 148 of the Atomic Energy Act. The House bill contained no similar provision.

The House recedes with an amendment.

ENVIRONMENTAL STUDIES AND THE NUCLEAR WEAPONS COMPLEX

The House bill and the Senate amendment contained similar provisions (Section 211) restricting the use of funds authorized to be appropriated by the Act for the purpose of preparing environmental impact statements not already in the process of preparation with respect to the operation of any defense facility of the Department of Energy unless the preparation of such statements is required by statute. The Senate amendment contained an additional provision that requires the Secretary of Energy to notify the Committees on Armed Services of the Senate and the House of Representatives of his intention to proceed with an environmental impact statement relating to the operation of any defense facility of the Department of Energy where the cost of preparing such statement would exceed \$500,000. Under the Senate provision, the Secretary could proceed with the environmental impact statement

3, 1981

November 3, 1981

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UP AMENDMENT NO. 567

Mr. WARNER. Mr. President, I send to the desk an unprinted amendment, on behalf of Senator STAFFORD.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Virginia (Mr. WARNER), on behalf of Mr. STAFFORD, proposes an unprinted amendment number 567.

Mr. WARNER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike lines 7 through 23 on page 15 and lines 1 through 9 on page 16 and, in lieu thereof, insert the following:

"a. In addition to any other authority or requirement regarding protection from dissemination of information, and subject to subsection (b) (3) of section 552 of title 5 of the United States Code, the Secretary of Energy, with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized dissemination of information pertaining to—

(1) the design of production facilities or utilization facilities, or security measures (including security plans, procedures, and equipment) for the physical protection of such facilities (including the nuclear material therein); or

(2) the design of atomic weapons: Provided, however, that the authority of paragraph (a) (2) of this section shall be limited to information declassified or removed from the Restricted Data category by the Department of Energy or its predecessor agency pursuant to section 142;

If the unauthorized dissemination of such information could reasonably be expected to result in significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Secretary, in determining whether there will be a significant increase in the likelihood of theft, diversion, or sabotage, may consider the likelihood of theft, diversion, or sabotage were the information to be withheld under this section at no time available for dissemination. The Secretary shall exercise the authority of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Any person who violates any regulation adopted under this section shall be subject to the imposition by the Department of Energy of the civil monetary penalties of section 234 of the Act. Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of the Congress.

"b. For the purposes of section 223 of this Act, any regulations prescribed by the Secretary under this section shall also be deemed to be prescribed or issued under section 161b.

"c. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a) (4) (B) of section 552 of title 5 of the United States Code.

"d. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

"(1) identify any information protected from disclosure pursuant to such regulation or order;

"(2) specifically state the Secretary's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to result in significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection a. of this section; and

"(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security."

Mr. STAFFORD. Mr. President, the intent of this amendment is to refine the language of section 210 of S. 1549 by clearly designating those categories of information that can be withheld under this provision.

In testimony before the Armed Services Committee, it became apparent that there are certain types of information that cannot be withheld under either Executive Order 12065 or the Atomic Energy Act, but which are nevertheless deserving of protection. The amendment recognizes that need and provides for the withholding of such information.

In addition, in order to insure proper application of this provision, the amendment contains a number of procedural protections that will govern the Department of Energy's use of this provision, including the requirement that the Secretary promulgate implementing regulations and the requirement that the Secretary prepare a quarterly report describing the Department's use of this provision.

Finally, I should note that this amendment fully satisfies concerns raised by Senator HARR, a member of both the Environment and Public Works and Armed Services Committees.

Mr. President, with the minor technical changes detailed in this amendment, I am confident that the authority extended to the Department of Energy will be fully adequate to address the concerns raised, and I urge its adoption.

Mr. WARNER. Mr. President, the amendment proposed by Senator STAFFORD is a refinement of section 210 as reported by the committee and I understand it has been thoroughly coordinated at the staff level among all those committees which have an interest in this legislation. I have reviewed the amendment and am prepared to recommend, on behalf of the Armed Services Committee, that it be accepted.

The intent of the provision is straightforward. There are certain narrow categories of information that cannot be classified under current law, but which should not be made generally available to the public for reasons of national security. The specific types of information

that I am talking about were enumerated by Energy Department officials during our hearings on this bill.

Mr. President, let me emphasize that this section is not blanket authority for the Energy Department to circumvent the requirements of the Freedom of Information Act. The provision is quite similar to a provision enacted last year to protect similar information under the responsibility of the Nuclear Regulatory Commission.

I thank Senator STAFFORD for his attention to this matter and we accept the amendment.

Mr. STAFFORD. Does this amendment create an alternative system of classification that the Department of Energy may invoke in lieu of present classification procedures established in the Atomic Energy Act and Executive Order 12065?

Mr. WARNER. No. This amendment, if adopted, will enable the Department of Energy, upon making the requisite finding, to withhold certain narrowly defined types of information which are not now classifiable as national security information or restricted data.

If a given piece of information is not classifiable as national security information or restricted data, the Department is to follow the procedures established in Executive Order 12065 or the Atomic Energy Act for the classification of such information. In no case will a given piece of information fall within the scope of the Atomic Energy Act or Executive Order 12065 and this provision. And finally, where questions arise concerning whether certain information is to be classified as restricted data or national security information or designated "Unclassified Information" under this provision, such questions are to be resolved in favor of formal classification.

Mr. STAFFORD. Does this provision enable the Department of Energy to withhold from dissemination reports provided by local law enforcement agencies regarding the protection of nuclear materials or facilities?

Mr. WARNER. Yes. Section (A) (1) of this amendment authorizes the Department to withhold information specifically identifying security measures for the physical protection of production and utilization facilities. Reports from local law enforcement agencies may be withheld under this provision if the Secretary determines that dissemination of such information could reasonably be expected to result in significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such a facility.

Mr. WARNER. Mr. President, I ask unanimous consent to have printed in the Record an extract from the hearings, dated May 5, 1981.

There being no objection, the extract was ordered to be printed in the Record, as follows:

EXTRACT FROM HEARINGS, DATED MAY 5, 1981

Senator WARNER. In defense programs you are responsible for the nuclear weapons, nuclear material production, and nuclear material safeguards programs. Do you feel that

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you have sufficient authority to prevent the release of information in these areas if release of the information could adversely affect the public?

Mr. MORGAN. We do have authority to withhold certain information on nuclear programs classified as Restricted Data and Formerly Restricted Data under the Atomic Energy Act, and other information classified as National Security Information in keeping with current Executive Orders. However, we feel that there are additional areas of unclassified information which should not be released and for which the DOE does not currently have the unambiguous authority to protect.

This information for example, concerns the safeguarding of nuclear materials and facilities, the production of special nuclear materials and the design or use of nuclear weapons and parts for those weapons. The release of some of the unclassified information could have adverse effects on the health and safety of the public or the common defense and security. It could facilitate the theft, diversion or sabotage of nuclear materials or facilities or the illegal production of special nuclear material or nuclear weapons.

Last year NRC sought and obtained legislation to allow withholding of certain unclassified information within their area of responsibility, e.g. regarding licensee nuclear facilities (now Section 147 of the Atomic Energy Act). In our judgment, it would be highly advisable to at least conform DOE's authority in its areas of concern. Essentially, basic responsibility for common defense and security under the Atomic Energy Act rests with the Department and, ultimately, the President.

To illustrate the kind of information we feel requires this additional authority, let us give you a few examples:

1. The DOE is responsible for the physical security of numerous nuclear facilities and nuclear materials. Certain information regarding the physical protection of these facilities cannot be classified. Examples include the physical layout of the site, general diagrams showing electrical wiring and utilities, and other information necessary to construct and operate the site, such as emergency operating procedures. We believe this kind of information should not be released to the public because it could assist in planning an attack on that facility.

2. As another example, reports are provided to us from local law enforcement agencies regarding their ability to assist us in protecting nuclear materials or facilities. This data could be useful to a terrorist or saboteur but we have no clear authority to withhold it from release.

3. Certain information concerning physical protection of small quantities of uranium and plutonium as well as other hazardous nuclear materials (e.g., Cobalt-60) is not classifiable as National Security Information but we feel it should be protected from disclosure because it could lend valuable assistance to the perpetration of acts counter to the public interest such as deliberate acts of radiological contamination.

4. There is certain Government generated information regarding nuclear weapons but which may not be appropriate for the U.S. Government to be making freely available. This information was once "restricted data" but was declassified for valid reasons at various times in the past. More recently we have seen the rise of threats, terrorism, and nuclear weapon proliferation and we are concerned that some of this unclassified material could be useful to a terrorist or an extortionist for either threatening to or fabricating an improvised nuclear explosive. In addition, such documents have been the source of design information by private individuals attempting to stimulate publication of nuclear weapons designs. We think it unwise for the government to be in a position

to be required to contribute to the development of information of this nature.

5. There are certain defense related reactor designs for material production and for naval propulsion purposes which are unclassified, but which should be controlled because such designs relate closely to nuclear materials production quantities and for strategic capabilities.

To summarize, it is suggested that the public health and safety and the common defense and security are better served if the authority existed to allow the protection of information such as these examples point out.

Mr. WARNER. Mr. President, I ask for a voice vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The amendment (UP No. 567) was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 568
Mr. WARNER. Mr. President, I send to the desk an unprinted amendment, on behalf of Senator STAFFORD.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Virginia (Mr. WARNER), for Mr. STAFFORD, proposes an unprinted amendment numbered 568.

Mr. WARNER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike lines 3 through 25 on page 17 and lines 1 through 7 on page 18 and, in lieu thereof, insert the following:

SEC. 211. (A) No funds appropriated pursuant to an authorization of appropriations contained in this Act may be obligated or expended for the purpose of preparing any environmental impact statement not already in the process of preparation with respect to the operation of any defense facility of the Department of Energy unless the preparation of such statement is required by statute.

(b) In those instances where the cost of preparing any environmental impact statement not already in the process of preparation with respect to the operation of any defense facility of the Department of Energy shall exceed \$500,000, the Secretary shall notify the Committees on Armed Services of the Senate and the House of Representatives of the intent to proceed with such a statement. The Secretary shall proceed with preparation of such a statement upon

(1) expiration of a period of thirty days following the date of the receipt of such notice by such Committees, or

(2) receipt by the Secretary from each such Committee, before the expiration of such thirty day period, of a written notification concurring in the decision to proceed with such a statement.

Mr. STAFFORD. Mr. President, the intent of this amendment is to clarify the language of section 211 by emphasizing that, while the Department of Energy is barred under this provision from preparing environmental impact statements not required by NEPA, this provision is in no way intended to amend NEPA. After nu-

merous discussions with the members of the Armed Services Committee, it was agreed that the wording of this amendment will convey to DOE the committee's concern that environmental impact statements not be prepared unless required by law.

At the same time, the amendment addresses concerns raised by the Environment and Public Works Committee regarding the possibility that the present version of section 211 might, in fact, amend NEPA by altering the standard to be used in determining whether to prepare an environmental impact statement.

Finally, I should note that this amendment fully satisfies concerns raised by Senator HART, a member of both the Environment and Public Works and Armed Services Committees.

This amendment will convey the committee's concern without working an amendment of NEPA, and on that basis I urge its adoption.

Mr. WARNER. Mr. President, perhaps it would be useful to provide some legislative history with respect to section 211 of the bill as reported by the committee. During its review of this bill the committee was advised that the Department of Energy would spend several million dollars in preparing an environmental impact statement covering the "ongoing operations" of the Pantex facility in Amarillo, Tex., where nuclear warheads are assembled. This EIS was to be accomplished, not because DOE felt that it was required by the National Environmental Policy Act (NEPA), but because DOE had been threatened with litigation from some environmental groups. In fact, DOE had done an environmental assessment of the Pantex operation as required by NEPA and concluded that an EIS was unnecessary.

This incident triggered the committee's concern. No department should be reacting to the threat of litigation by spending millions of dollars to write EIS's when they are not required under NEPA. At the committee's request, DOE provided information on how much it has spent to write environmental studies since NEPA was enacted. Although some of the figures are estimates, DOE calculates that it has spent more than \$40 million on such studies related to defense program facilities.

Mr. President, I am not a critic of NEPA. The requirements in NEPA to understand—and to mitigate—the environmental consequences of major Federal actions has had a profound impact on the development of this Nation over the last decade. The environmental awareness that has been spawned across the country has undoubtedly served to benefit future generations. However, I do begin to be concerned when I see what I perceive to be abuses of NEPA. NEPA was meant to be applied to "major Federal actions" that would potentially result in "significant impact on the human environment." It was not meant to require costly studies of "ongoing operations" or relatively minor changes where the impact on the environment cannot even be measured. It was this concern, triggered by the Pantex case, that resulted in the committee's drafting of section 211.